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Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE

UNITED STATES

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Spring Term, 1974

No. 73-6179

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JAMES WOODROW CAMERON, JR.,
Petitioner,

vs.

STATE OF NORTH CAROLINA,
Respondent.

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# BRIEF OF RESPONDENT, STATE OF NORTH CAROLINA, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PETITION NOT PRINTED
REPLY BRIEF NOT PRINTED

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## OPINION BELOW

Petitioner, was originally tried and convicted on the charge of safecracking in the Superior Court of Forsyth County during the January, 1973 Session of Superior Court. (72 CR 32534) From a sentence that he be imprisoned for a term of not less than twenty-five years to a term of his natural life, defendant perfected a direct appeal to the North Carolina Supreme Court. After judicial review that Court found no error. *State v. Cameron*, 284 NC 165.

From judgment set out above, petitioner has filed a petition for a Writ of Certiorari to the Supreme Court of North Carolina in the Supreme Court of the United States.

## JURISDICTION

The jurisdiction of this Court has been invoked pursuant to 28 U.S.C., Sec. 1257(3).

## QUESTIONS PRESENTED FOR REVIEW

1. Whether or not it is a violation of due process of law and equal protection of the laws, to fail to accord to a defendant the benefits of North Carolina law and after his conviction require to entry of final judgment?

2. Whether or not an indigent pellant is entitled to the appointment of counsel to prepare and perfect certiorari to this Court to review denial of relief to him by the North Carolina Supreme Court?

## CONSTITUTIONAL PROVISIONS INVOKED

A. Section 1 of the Fourteenth Amendment to the United States Constitution:

> "(A) LL Persons born or naturalized in the United States and subject to the jurisdiction thereof or citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or amunities of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction equal protection of law."

B. North Carolina General Statue 14-89.1 as amended by Chapter 235 of the Session Laws.

> "Upon conviction thereof, receive a sentence, in the discretion of the trial judge, of not less than two years nor more than thirty years imprisonment."

## ARGUMENT 1

THE DEFENDANT WAS NOT DENIED EQUAL

PROTECTION OF THE LAWS OF THE STATE OF NORTH CAROLINA OR THE UNITED STATES CONSTITUTION WHEN THE NORTH CAROLINA SUPREME COURT UPHELD THE VERDICT AND JUDGMENT OF THE LOWER COURT.

The defendant, in the Superior Court of Forsyth County, North Carolina was tried and convicted of a violation of G.S. 14-89.1 (safecracking). The punishment set out in the Statute provided that in the discretion of the trial judge a person convicted of a violation of this Statute could be imprisoned for ten years to life imprisonment in the State Penitentiary.

The crime was committed on the 29th of August, 1971. The sentence against the defendant, James Woodrow Cameron, Jr., was dated the eighth day of February, 1973. The verdict of the North Carolina Supreme Court was filed on 14 November 1973 upholding the judgment and sentence imposed upon the defendant by the lower Court.

North Carolina General Statue 14-89.1 was amended by the North Carolina General Assembly by Chapter 235 of the Session Laws, effective 19 April 1973. The amendment provided that in the discretion of the trial judge the defendant could be convicted of not less than two and not more than thirty years imprisonment in the State Penitentiary. Section 2 of the same act states:

> "This act shall apply to all offenses committed after its ratification and shall become effective upon ratification."

The State argues here that when the amending statute contained a saving clause set out above, it showed that the legislative intent was to make the amendment prospective only, and that punishment for the crime before April 19, 1973 must be imposed under pre-existing law. *State v. Harvey*, 281 NC 1, 16, 187 S.E. 2nd., 706; *State v. Barden*, 272 NC 72, 75, 157 S.E. 2nd., 698; and *State v. Perkins*, 141 NC 797, 53 S.E. 735.

The 1973 Amendment did not repeal G.S. 14-89.1 but was directed to the punishment provisions, and by Section 2 set out above the amended statute expressly provided that this act shall

apply to all offenses committed after its ratification. Under the terms of this amendment it is clear that the legislative intent was a reduction in punishment only to acts committed after April 19, 1973. The act that the defendant was convicted of and prosecuted for occurred prior to April 19, 1973 and the State would argue that the trial judge properly imposed sentence according to the provisions of G.S. 14-89.1 as it existed prior to the 1973 amendment.

## ARGUMENT 2

**WHETHER OR NOT THE INDIGENT APPELLANT, JAMES WOODROW CAMERON, JR. WAS ENTITLED TO APPOINTMENT OF COUNSEL TO PREPARE AND PERFECT CERTIORARI TO REVIEW A DENIAL OF RELIEF TO HIM BY THE NORTH CAROLINA SUPREME COURT.**

The State would argue under this question that no constitutional rights were involved of substantial nature, and that the defendant has no right for direct appeal to the United States Supreme Court. However, a case very similar to the facts set out in the defendant's petition was granted certiorari on January 7, 1974, *Ross v. Moffitt*, 94 S.Ct. 864 Case No. 73-786, which is to be argued on April 22, 1974. Inasmuch as the facts are similar the State will rest its argument on the Briefs and oral argument in the *Moffitt* case.

## CONCLUSION

The respopondent respectfully request that for the above stated reasons that thethe petition for Writ of Certiorari be denied.

Respectfully Submitted,

ROBERT MORGAN
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## CERTIFICATE OF SERVICE

We hereby certify that we have served a copy of the Respondent's Brief in Opposition to Petition for Writ of Certiorari on James Woodrow Cameron, Jr., by depositing the same in an envelope addressed to the said at his last address known to us, being, James Woodrow Cameron, Jr., 831 West Morgan Street, Raleigh, North Carolina, with first-class postage affixed, and depositing the same envelope in a United States Post Office in Raleigh, North Carolina.

This the 16th day of April, 1974.

James E. Magner Jr.

JAMES E. MAGNER, JR.
Assistant Attorney General

COUNSEL FOR THE STATE OF
NORTH CAROLINA, RESPONDENT